SELECTED CHANGES AFFECTING CONSUMER BANKRUPTCY PRACTICE IN THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

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NOTE: *The listing below is intended to only outline or summarize the changes to consumer bankruptcy practice by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The language used to describe some changes is shortened, and terms of art are sometimes reduced from the actual language of the new law. References are to sections of the Code, as amended.*

1. There are four new definitions in § 101 that are especially important to consumer practitioners:

1) Section 101(10A) defines a new term of art, ***"current monthly income,"*** with reference to the six months preceding the petition month. Current monthly income is the platform for the new "means test" in § 707(b) and for calculating disposable income for over median income debtors in § 1325(b).

2) Section 101(12A) defines a ***"debt relief agency"*** to include many bankruptcy practitioners. Sections 526, 527 and 528 impose many new duties and restrictions on bankruptcy practitioners who are debt relief agencies.

3) Section 101(14A) broadly defines ***"domestic support obligation"*** to include alimony, maintenance and support accruing before or after the petition and owed to various individuals or entities. This new definition is used in many sections dealing with dischargeability, priorities, confirmation of plans, etc.

4) Section 101(39A) defines ***"median family income"*** by reference to census data, adjusted by the Consumer Price Index. Many sections of

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[1] Thanks to James P Caher for his insight, assistance and corrections.

the new Code—including the means test in § 707(b) and the disposable income test in § 1325(b)—use median family income as a measuring stick to trigger important consequences.

2. No individual may be a debtor under Title 11 unless, within 180 days before filing the petition, the debtor received an individual or group briefing (including by phone or internet) from an approved non-profit entity that outlined opportunities for credit counseling and assisted the debtor in performing a personal budget analysis. The court may grant an exemption based on the debtor's sworn statement but exemption expires 30 days after the petition. The briefing is not required if court determines that debtor is incapacitated (mentally), disabled (physically), or active military in a combat zone. § 109(h)(1)

The reference to "briefing" is new. The briefing must both outline the opportunities to obtain credit counseling and assist the debtor in performing a related budget analysis. The exemption is available only if debtor certifies "exigent circumstances" and that the debtor made a request for credit counseling that went unfulfilled for five days. The requirement that a debtor obtain a prefiling briefing is not applicable to a debtor who resides in a district for which a counseling agency is not reasonably able to provide such services as determined by the United States Trustee. This exception is not all together consistent with the congressional directive that the briefing can be by telephone or internet.

3. A bankruptcy petition preparer is specifically prohibited from advising a debtor whether to file, under which chapter to file, whether the debtor will receive a discharge and the debts that would be covered by such discharge, whether the debtor may retain property after the filing, the dischargeability of tax obligations, whether the debtor can or should reaffirm any debt, the characterization of any debt, or information relating to any bankruptcy procedure. § 110(e)(2)

A Bankruptcy Petition Preparer is a Debt Relief Agency, subject to new restrictions, disclosures and penalties in §§ 526, 527 and 528. The Judicial Conference may promulgate guidelines for the maximum fee allowed to a Bankruptcy Petition Preparer. A Bankruptcy Petition Preparer may not collet the filing fees and court costs from a debtor.

4. The names of a debtor's minor children may not be disclosed in any document that will become a part of the public record, but children's identities may be maintained in a nonpublic record, available to the judge, the trustee, the U.S. Trustee or an auditor. § 112

> *The trustee that maintains the name of a minor child is prohibited from disclosing the name to anyone. The Bankruptcy Administrator is not listed as a party to whom the identity of minor children can be disclosed by the court. The court must now maintain a "non-public record" relative to the names of minor children. The trustee will have to access this nonpublic record to satisfy new noticing responsibilities.*

5. Professionals hired by a trustee or committee may be compensated on a fixed fee or percentage fee basis, and are not limited to fees determined on a lodestar basis. § 328(a)

> *This section clearly permits flat fee compensation for attorneys.*

6. Whether a professional is board certified is a factor that may be considered in fixing compensation. § 330(a)(3)(E)

7. The compensation a Chapter 7 trustee shall be treated as a commission. § 330(a)(7)

> *This section eliminates the position that a trustee is compensated based on an hourly rate capped by the amounts specified in § 326.*

8. The representation of a creditor holding a consumer debt at a Chapter 7 or Chapter 13 meeting of creditors need not be by counsel but may be through an employee or agent of the creditor, and that agent is permitted to represent multiple creditors. This authorization may not be limited by any local or state rule governing the unauthorized practice of law. § 341(c)

> *This provision ends the various arguments that appearing on behalf of a consumer creditor at a meeting of creditors must be by counsel; the authority apparently does not extend to creditors holding <u>non</u>-consumer debts.*

9. The court may order the U.S. Trustee not to convene a meeting of creditors if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of a case. § 341(e)

> *Although probably intended to apply only to Chapter 11 cases—mindful of the prepackaged Chapter 11s that have been somewhat successful—the new subsection is not limited to cases under Chapter 11 and could be useful in Chapter 13 cases when the debtor can't physically attend a § 341 meeting. Note, too, that obtaining acceptances would not be required to obtain a court waiver of the MOC.*

10. Any notice to be given by a debtor to a creditor must include the account number and must be sent to the address designated by the creditor if the creditor sent two communications to the debtor within 90 days of the filing of the petition that included the debtor's account number and the creditor's correspondence address. § 342(c)(2)

> *Each notice to a creditor must also contain the debtor's address and the last four (4) digits of the debtor's social security number.*

11. In any Chapter 7 case in which the presumption of abuse arises under § 707(b), the clerk must provide notice of the presumption to all creditors within 10 days of the filing of the petition. § 342(d)

> *This notice is well prior to the time that the United States Trustee must file a report of its review of the petition after the meeting of creditors.*

12. Any entity may file *with any bankruptcy court* a "notice of address" for all notices in all cases under Chapter 7 or Chapter 13 in all bankruptcy courts. This "notice of address" must be used for all noticing by a court 30 days after filing unless the entity files a (different) "notice of address" in a specific case. A notice of address filed in a specific case must be used by the court or by the debtor five days after filing. § 342(e) and (f)

> *This is likely to become one of the most problematic provisions of the new law. There is no protocol within or among the bankruptcy courts to carry out these new requirements.*

13. Notice provided to a creditor—by the debtor or by the court—inconsistent with the new rules in § 342 shall not be effective until the notice has been "brought to the attention" of the creditor. If the creditor "designates a person or organizational subdivision" to receive bankruptcy notices and has a reasonable procedure to deliver notices to such person or subdivision, then a notice has not been "brought to the attention" of the creditor until the designated person or subdivision receives the notice. § 342(g)(1)

> *Smarmy creditors will file national designations of a Clerk in the Fourth Degree, buried in a suburban office complex somewhere outside of Vladivostok.*
>
> *If notice is not effective, then the automatic stay, the time to object to exemptions, the deadline for filing a nondischargeability complaint, or the deadline to file a claim may be impacted by this exception.*
>
> *Creditors are only entitled to this safe harbor if they establish "reasonable procedures" so that notices are delivered to the appropriate person or department. Courts will be called upon to review these procedures and decide whether the procedures are reasonable.*

14. No monetary penalty for violation of the stay under § 362(a) or for failure to turnover property under §§ 542 and 543 may be imposed on a creditor unless the action or failure takes place after the creditor has received notice effective under § 342. § 342(g)(2)

> *This could be interpreted as a shelter for creditors to violate the stay with impunity until they receive "official" notice at the designated address, including required account numbers, etc. Arguably, a phone call or faxed petition won't do unless it gets to the "designated person or organizational subdivision" described above. Did they forget about the codebtor stay in § 1301?*
>
> *The safe harbor is only available to a creditor that establishes reasonable procedures to be sure notice is brought to the attention of the proper office or department. The court will be asked to review creditors' procedures to determine whether they are reasonable.*

15. Upon conversion from Chapter 13, valuations of property and of allowed secured claims in the Chapter 13 apply only if conversion is to Chapter 11 or 12, not to Chapter 7. § 348(f)(1)(B)

16. Upon conversion from Chapter 13, any creditor with security at the petition continues to be secured by "that security," unless the full amount of "such claim" was paid before conversion, notwithstanding any valuation or determination of an allowed claim during the Chapter 13 case. § 348(f)(1)(C)(i)

17. Unless a prebankruptcy default was fully cured under the plan before conversion, the default has its non-bankruptcy effect "in any proceeding under this title or otherwise." § 348(f)(1)(C)(ii)

18. Except in a Chapter 11 or 13 (12?) case refiled after dismissal under § 707(b), the automatic stay with respect to leases, debt and property securing debt expires 30 days after the later filing if the debtor had another case pending within one year and that prior case was dismissed. The court can continue the stay, after a hearing that must be completed within 30 days after the later filing, only if the moving party proves that the later case was filed in good faith "as to the creditors to be stayed." As to all creditors, there is a (rebuttable) presumption of a lack of good faith if:

1) the debtor had more than one previous case pending within one year; or
2) a previous case was dismissed within the preceding year, after the debtor failed to—
   (a) file or amend required documents without substantial excuse;
   (b) provide adequate protection ordered by the court; or
   (c) perform the terms of a confirmed plan, or—
3) there has not been a substantial change in the financial or personal affairs of the debtor since dismissal of the last case, or any reason (not?) to conclude that the later case will be concluded with a Chapter 7 discharge or a confirmed, fully performed plan.

There is a (rebuttable) presumption of lack of good faith as to any creditor that filed a relief stay request in a previous case if, at dismissal of the previous case, the request was still pending or had been resolved by terminating, conditioning or limiting the stay. § 362(c)(3)

If a case was dismissed because the debtor worked out a "debt repayment plan," the presumption of bad faith does not apply in any subsequent case. § 362(i) Rebutting the presumption requires "clear and convincing" evidence.

19. "Other than [in?] a case refiled under section 707(b)," no automatic stay arises if the debtor had two or more cases pending within the previous year, but were dismissed. Upon request of any party, the court shall enter an order confirming that no stay is in effect. Within 30 days of the filing of the petition, any party can request the court to impose a stay only if the party demonstrates that the later filing is in good faith. There are the same (rebuttable) presumptions that the filing is not in good faith as discussed immediately above with respect to § 362(c)(3), except the words used in § 362(c)(4) are not exactly the same as in § 362(c)(3), including the expansion of prior cases to encompass any case under this title. § 362(c)(4)

20. The stay expires 60 days after a request for relief unless a "final decision" is rendered. The 60 days can be extended by agreement or upon findings of good cause. § 362(e)(2)

21. The stay terminates as to personal property that secures a claim or that is leased if the debtor fails to timely file a proper statement of intent or fails to take action to implement the statement of intent within the time prescribed in § 521(a)(2). If the debtor fails to reaffirm or redeem within 45 days, the stay terminates automatically and the property exits the estate. § 362(h) and § 521(a)(2)

Upon motion of the trustee, made within 45-days after the meeting of creditors, the court may prevent the automatic termination of the stay for the debtor's non-compliance. If no statement of intent is filed, the trustee must move within 30 days of filing.

22. The automatic stay does not apply to the withholding of income that is property of the estate or property of the debtor for the payment of a domestic support obligation pursuant to a judicial or administrative order *or statute*. Under § 101(14A), domestic support obligations, includes debts accruing before or after the petition, even if assigned to a government unit, but does not extend to support obligations arising only by statute. § 362(b)(2)(C)

This new exception to the automatic stay empowers support creditors to disrupt the repayment of debt in a Chapter 13 case. It may be possible that an order under § 1325(c) may limit the application of this exception.

23. The automatic stay does not apply to the withholding suspension or restriction of a driver's, professional, occupational or recreation license as specified in 42 U.S.C. § 466(a)(16)—upon nonpayment of support. § 362(b)(2)(D)

Additional leverage for support creditors to disrupt the plan in a Chapter 13 case.

24. The automatic stay does not apply to the interception of tax refunds to collect support obligations. § 362(b)(2)(F)

The ability of a support creditor to intercept tax refunds without stay relief will impact any Chapter 13 plan dependent upon tax refunds for funding. It is not clear whether a plan provision dedicating tax refunds to a plan would trump this exception to the stay.

25. The automatic stay does not apply to the creation or perfection of a statutory lien for *ad valorem* taxes on personal property or taxes upon real property when a governmental unit assesses the taxes after the filing of the petition. § 362(b)(18)

26. The automatic stay does not apply to the consensual withholding of income from a debtor's wages to repay a loan incurred by a debtor from a qualified pension, profit sharing, stock bonus or thrift savings plan. A Chapter 13 plan cannot "materially alter" the terms of a loan described in § 362(b)(19) and "any amounts" required to repay such a loan are excluded from disposable income. § 362(b)(19) and § 1322(f)

27. The court may grant relief from the automatic stay as to real property, that precludes application of the stay for two years in any subsequent bankruptcy case, if the petition was part of a scheme to hinder, delay or defraud creditors that included the unauthorized transfer of the real estate or involved multiple bankruptcy filings, if the relief stay order is properly recorded under state law. Following "entry of the order," in a prior case, the automatic stay does not apply to the enforcement of any lien or security interest in the property for two years in any subsequent case. §§ 362(d)(4) and 362(b)(20)

Section 362(d)(4) requires recording for the relief stay order to have its two-year affect; the stay exception in § 362(b)(20) does not seem to require recording of the prior stay relief order. Ambiguously, the court can grant relief from "such order" based on changed circumstances or good cause under either section.

28. The automatic stay does not apply to enforcement of a lien against real property if the debtor is ineligible by virtue of a prior dismissal under § 109(g), or when the filing violates a court order in a prior case that prohibited the filing. § 362(b)(21)

29. If a lessor of residential property obtained a judgment for possession before the petition, the automatic stay does not apply to the *continuation* (only!) of an eviction or unlawful detainer action:

1) *immediately,* without relief from the stay in § 362(a)(3), unless the debtor files—
   (a) "with the petition," a "certification,"
      (i) whether a judgment for possession of residential property was obtained before the petition; *and*
      (ii) that under nonbankruptcy law, the debtor would be permitted to cure the monetary default that gave rise to the judgment for possession *after* that judgment was entered; *and*
      (iii) that the debtor deposited with the (bankruptcy?) court clerk any rent that would become due within 30 days after the petition; *and*
   (b) within 30 days of the petition, a (second) certification that the debtor has cured the entire monetary default that gave rise to the judgment for possession;
2) *upon court order,* after a hearing that must be held within 10 days of the lessor's objection to any certification by the debtor;
3) *immediately,* without relief from the stay in § 362(a)(3), if the court sustains an objection of the lessor to any certification by the debtor;
4) *30 days after the petition,* if the debtor files the first certification, but not the second. § 362(b)(22) and (*l*)

If a judgment for possession of residential property was obtained against the debtor prepetition, the judgment must be indicated "on the bankruptcy *petition"* together with the name and address of the lessor. § 362(*l*)(5)

> *Section 362(b)(22) must be read with section 362(l) and is internally inconsistent, partially redundant and substantially incomprehensible. Best advice: if you can, file* before *a judgment for possession of leased property. In a Chapter 13 case, you may have until confirmation to assume a residential lease but the stay won't protect the debtor if there was a prepetition judgment for possession unless the debtor negotiates the maze in new § 362(b)(22) and (l). Don't forget to include the lessor's name and address on* ***both*** *the petition and on any certification filed under § 362(l).*

30. The stay of an eviction action (only!) does not apply, if a landlord files a certification that:

1) an eviction action has been filed based on the debtor's endangerment of residential property or illegal use of controlled substances on the property; or
2) that the debtor has endangered the property or used or allowed use of controlled substances on the property in the 30 days before the certification. § 362(b)(23) and (m)

31. The stay does not prevent the setoff of a prepetition tax refund against a prepetition tax liability. § 362(b)(26)

32. Only "actual damages" can be imposed for violation of stay by a creditor acting in the good faith belief that the stay terminated under § 362(h) due to the failure of the debtor to file or perform the statement of intent. § 362(k)(2)

33. A Chapter 7 debtor may personally assume a lease of personal property if the trustee does not and the creditor consents. Assumption imposes liability on the debtor, not on the estate. § 365(p)(2)

34. The stay is not violated by a lessor negotiating with a Chapter 7 debtor after the debtor notifies the "creditor" in writing that the debtor desires to assume a lease of personal property. § 365(p)(2)

Similarly, it will not violate the discharge injunction of § 524 for the lessor to contact the debtor about conditions for assumption after notice from the debtor.

35. If a lease of personal property is not assumed in a Chapter 13 plan, at the conclusion of the hearing on confirmation, the lease is deemed rejected and the stay and the codebtor stay are terminated as to the property. § 365(p)(3)

36. Granting a utility an administrative expense priority is not adequate assurance of payment under § 366 and the stay does not prevent a utility from recovering or setting off a prepetition deposit without notice or court order. § 366(c)(1)(B)

37. In Chapter 13 cases, the bar date for tax claims is 60 days after the filing of any return required to be filed by new § 1308. § 502(b)(9)

Is the governmental bar date of 180 days after the filing of the petition shortened by this new provision if the § 1308 tax return is filed before 120 days after the filing of the petition?

38. The court may reduce a dischargeable unsecured claim by up to 20% if the creditor unreasonably refused to negotiate an alternative payment schedule proposed by an approved credit-counseling agency. The repayment proposal must have offered at least 60% of the debt and must have been made at least 60 days prior to the petition. § 502(k)

The debtor must prove by "clear and convincing" evidence that the refusal "to consider" (sic: negotiate?) was unreasonable and that the proposed alternative payment schedule was made at least 60 days before the filing of the petition.

39. The value of goods received by the debtor in the 20 days before the petition in the ordinary course of the debtor's business is a new administrative expense. § 503(b)(9)

40. Property taxes incurred by the estate—whether secured or unsecured and without regard to personal liability—are administrative expenses; governmental units need not file a "request" to have an allowed administrative expense for any tax incurred by the estate. § 503(b)(1)(B)(i)

Obvious question: How will trustees know to pay a property tax administrative expense for which no request has been filed?

41. In individual Chapter 7 and 13 cases, the value of personal property securing an allowed claim shall be replacement value on the date of the petition without deduction for sale or marketing costs. For goods acquired for personal, family or household purposes, replacement value means the price a retail merchant would charge for property of that kind given its age and condition. § 506(a)(2)

Remember: § 506 does not apply at confirmation of a Chapter 13 case with respect to some purchase money claims under § 1325(a).

42. Allowed unsecured (only!) claims for domestic support—whether assigned to a governmental unit, or not—are first priority; the administrative expenses of a trustee—including a standing trustee under § 1302—"shall be paid" before a domestic support claim "to the extent" the trustee administers assets available for payment of the support claim. § 507(a)(1)

If the comp and expenses of a Chapter 13 trustee are characterized as administrative expenses under § 503(b), there may be a new limit on payment of comp and expenses when there is an allowed domestic support claim.

43. There is a new tenth priority for claims for death or personal injury resulting from drunk driving or use of drugs while operating a motor vehicle. § 507(a)(10)

This has implications under Chapter 13 by operation of § 1322(a)(2).

44. The priority "look back period" of 240 days from assessment of taxes is suspended for any period in which an offer in compromise was pending or a stay was in effect. § 507(a)(8)(A)

45. An "otherwise applicable time period" for priority treatment of taxes under § 507(a)(8) is suspended for any period in which collection was prevented by nonbankruptcy law or by stay in a prior case or by the existence of a confirmed plan, plus an additional 90 days. § 507(a)(8)(G)

46. Tax claims get interest at "nonbankruptcy law" rates whenever interest or present value is due a tax claimant. § 511

47. Debtors must file copies of "all payment advices or other evidence of payment" received by the debtor from an employer in the 60 days prior to the filing. The failure to file payment advices is one of the grounds for "automatic dismissal" on the 46th day under § 521(i). § 521(a)(1)(B)(iv)

> *The payment advice obligation appears to apply only in cases where a debtor is an "employee"; self-employed debtors are not included.*

48. Debtor must file a statement of "monthly net income" that shows how that amount was calculated. § 521(a)(1)(B)(v)

> *In contrast, new § 707(b)(2)(C) requires a new statement of the debtors "current monthly income"—a term of art defined in § 101(10A) by reference to the six months preceding the petition.*

49. Debtors must file a statement showing any "reasonably" anticipated increase in income or expenditures within the year after filing. § 521(a)(1)(B)(vi)

50. Debtors must file a certificate from the approved, nonprofit budget and credit counseling agency that describes the services (briefing?) provided to the debtor and the debtor must file a copy of the debt repayment plan, if any created prior to filing. § 521(b)

> *The nature of the briefing and exemption by certificate of "exigent circumstances" are in § 109(h). The briefing requirement does not apply to incapacitated, disabled or combat zone debtors. See § 109(h)(4).*

51. "Not later than 7 days before the date first set for the first meeting of creditors," Chapter 7 and Chapter 13 debtors "shall provide" to the trustee a copy (or transcript) of the federal tax return for the tax year ending before the petition, for which a return was filed. At the same time, the debtor must provide a copy (or transcript) of the return to any creditor that timely requests it. The court "shall dismiss" the case if the debtor fails to comply. § 521(e)(2)(A), (B) and (C)

> *Chapter 13 debtors have additional tax return filing responsibilities in new § 1308. To avoid dismissal, the debtor must demonstrate that the failure to comply was due to circumstances beyond the control of the debtor.*

52. At request of court, U.S. Trustee, or any party in interest, individual Chapter 7, 11 and 13 debtors must file tax returns (or transcript) at the same time filed with taxing authority, for each tax year ending while the case is pending, and do same for any return for any tax year ending within three years before the petition for which no return has been filed. Amendments to returns are treated the same. § 521(f)

> *Note additional tax return responsibilities in Chapter 13 cases in § 1308.*

53. Debtors must file a "record" of any interest in an educational IRA or a qualified state tuition program. § 521(c)

54. If requested by the trustee or the U.S. Trustee, a debtor must provide a photographic ID or other personal identifying information that establishes the debtor's identity. § 521(h)

55. In voluntary Chapter 7 and 13 cases, the case is "automatically dismissed" on the 46th day after the petition if the debtor "fails to file all of the information required under [§ 521](a)(1)." Debtor must seek extension within the 45 days after petition; trustee can also seek extension, but (curiously) on trustee's motion court must find that debtor made good faith attempt to file payment advice information required by § 521(a)(1)(B)(iv). § 521(i)

> *"Automatic" dismissal is a nightmare of epic proportions. Section 521(a)(1) filing requirements are intricate, detailed and the dismissal triggered "automatically" by failure to file exactly everything will be invisible until a party in interest requests entry of an order of dismissal.*

56. On request of taxing authority, court shall convert or dismiss case if, within 90 days after the request, the debtor fails to file a tax return that becomes due after the petition. § 521(j)

57. Chapter 7 debtor must perform statement of intention within 30 days of first date set for meeting of creditors. § 521(a)(2)(B)

Stay terminates if debtor fails to timely file or perform statement of intention. See § 362(h) and compare the language inserted after § 521(a)(6).

58. Chapter 7 debtor "shall . . . not retain possession" of personal property subject to a purchase money "interest" unless within 45 days of the "first meeting of creditors" the debtor either reaffirms or redeems the property. § 521(a)(6)

Stay terminates and property ceases to be property of the estate if debtor fails to act within 45 days unless trustee moves within that 45 days for court determination that property has "consequential value or benefit" for estate and court orders adequate protection of creditor's interest. In a nonsequitor, if the debtor fails to act within 45 days under § 521(a)(6) with respect to leased, rented or bailed property, any ipso facto clause is effective under § 521(d).

59. The court must provide a copy of a debtor's Chapter 13 plan within five days after receiving the request by a creditor and may impose a reasonable cost for providing it. § 521(e)(3)(B)

60. In Chapter 13 cases, on the later of 90 days after the end of a tax year or one year after the petition, if no plan is confirmed, the debtor must file a statement of income and expenditures for the tax year most recently concluded. § 521(f)(4)

This apparently applies only to the debtor; not the debtor's non-filing spouse or significant other contributing to the household. New statement must identify any person "responsible" for support of a dependent and any person who "contributed" to the household.

61. A debtor's exemptions are determined by examining state law for the state where the debtor has been domiciled for 730 days prior to the filing of the petition. If the debtor has not been domiciled in a single state for 730 days, exemptions are determined by the debtor's domicile for the majority of the 180 days that *preceded* the 730-day period. § 522(b)(3)(A)

Filers must know exemptions of all states since any state could be providing exemptions for a debtor that has moved within two years. Debtors rendered ineligible for "any exemption" by the new domiciliary requirement may use the federal exemptions. Debtors

moving from states with exemptions restricted to residents may become eligible for federal exemptions even if now resident in an opt-out state. This was not advertised.

62. The maximum amount of a qualified IRA that may be exempted is $1,000,000. § 522(n)

A debtor may request the court to increase this limitation "if the interests of justice so require."

63. The value of property subject to a homestead exemption would be reduced to the extent attributable to the value of property that a debtor disposed of with actual intent to hinder, delay or defraud a creditor within 10 years of the petition if the property would not have been exempt at the time of the transfer. § 522(o)

Debtors will need to disclose the transfers made to build exempt equity in homesteads within 10 years. If debtors make payments on mortgages from what would be nonexempt assets, with actual intent to hinder, delay or defraud creditors, the principal reduction would be excluded from the homestead exemption.

64. Retirement funds recognized by the IRC are exempt. § 522(b)(4)

Even where the IRS has not made a determination of the exempt character of the retirement funds, the debtor may establish that the fund is in "substantial compliance with the applicable requirements" of the Internal Revenue Code. Rollovers would also retain their exempt character.

65. Redundantly, the definition of "household goods" for purposes of lien avoidance are limited to clothing, furniture, appliances, one radio, one television, one VCR, one personal computer, children's furniture and toys, kitchenware, linens and medical equipment and supplies. "Household goods" specifically does not included works of art, other electronic entertainment equipment with an aggregate value of more than $500, antiques, jewelry with an aggregate value of more than $500, (except a wedding ring), motorized vehicles or recreational devices and tractors. § 522(f)(4)

Lien avoidance language is now a large mess. NPMSI in exempt jewelry, wearing apparel or appliances are still avoidable since this provision only excludes such items from the definition of household goods.

66. Homestead exemptions would be capped at $125,000 if the debtor acquired the property during the 1215-day period preceding the date of filing. The cap would apply irrespective of when the debtor acquired the property if the debtor violated the securities laws of the U.S. or the states, or had a debt from any criminal act or intentional tort within the preceding five years. § 522(p)

This limitation is not applicable to the principal residence of a family farmer. Also, if the interest were transferred from the debtor's previous principal residence, acquired prior to the 1215-day period, the cap is increased by the amount transferred from a previous homestead.

67. The presumption for nondischargeability purposes that an unsecured debt was incurred with fraud is lowered to debts incurred within 90 days of the filing that aggregate at least $500 for luxury goods or services and cash advances aggregating more that $750 within 70 days. § 523(a)(2)

68. The exception to discharge for student loans is expanded to encompass all student loans as defined by the IRC § 221(e)(1), expanding nondischargeable student loans to for profit and nongovernmental entities. § 523(a)(8)(B)

69. Debts incurred to pay taxes to any governmental unit are nondischargeable, not simply Federal taxes. § 523(a)(14A)

70. Loans to a pension fund are nondischargeable in Chapter 7. § 523(a)(18)

In a 100% Chapter 13 plan, the debtor might propose interest on this nondischargeable obligation under new § 1322(b)(10).

71. The nondischargeability of a non-support domestic obligation under § 523(a)(15) would no longer be dependent upon the initiation of a timely adversary complaint under § 523(c). Under Chapter 7, the non-support domestic obligation would survive the discharge. The "greater hardship" exception to the exception has been eliminated. § 523(c)

Debtors that are seeking to discharge a non-support domestic obligation could do so only under Chapter 13.

72. Reaffirmation agreements require extensive disclosures, and must outline the rights of the debtor and must specify the amount of the debt being reaffirmed, additional charges or costs imposed upon the debtor, the annual percentage rate, the simple interest rate and, if elected by the creditor, a statement of the repayment schedule. If secured, the disclosure must contain description of the property upon which the creditor's lien attaches, and the original purchase price of the items (if the security interest is not a purchase money interest, the disclosure must contain the amount of the original loan). The disclosure must include a statement that the debtor has the right to consult an attorney, that the reaffirmation agreement must be filed with the court before it becomes effective, and that the debtor has the right to rescind the reaffirmation within 60 days of its filing. A debtor must file a statement in support of the reaffirmation agreement and the debtor's attorney must certify that the agreement does not impose an undue hardship upon the debtor. A reaffirmation agreement is presumed to impose a hardship upon a debtor if the debtor's expenses including the payments on the reaffirmed debts are greater than the debtor's income. If such presumption exists, the debtor's attorney must affirm that in the attorney's opinion, the debtor can make the payments. The court, except for debts reaffirmed with a *credit union,* must review all reaffirmation agreements where the payment creates a presumption of undue hardship. The court must review all reaffirmations proposed by a debtor not represented in connection with the negotiation of the reaffirmation agreement. Although reaffirmation agreements must be executed prior to the entry of a discharge, there is no deadline for filing the reaffirmation agreement—it just cannot be enforced until the 60-day period has passed. § 524(k)

The law appears to recognize that attorneys can elect not to represent the debtor in connection with the reaffirmation process, thus triggering a court hearing. Even though there is no deadline for filing the agreement, the court's hearing on the reaffirmation must occur prior to discharge. Thus, if counsel does not represent the debtor, the filing of the reaffirmation appears to be required prior to discharge.

73. The willful failure of a creditor to credit payments made to the creditor pursuant to a reorganization plan in accordance with the plan constitutes a violation of the discharge injunction if the failure to properly credit the payments caused a material injury to the debtor. § 524(i)

Awkwardly, the posting by creditors of payments as required by a Chapter 13 plan is mandated by this provision. Although application of the section would not arise until after the discharge, this section addresses the chronic problem of a Chapter 13 debtor curing a mortgage default only to discover that the creditor failed to properly credit the payments.

74. The postdischarge injunction would not be applicable to a creditor with a lien on the debtor's residence seeking or obtaining periodic payments associated with a lien in lieu of pursuing its *in rem* rights. § 524(j)

The law creates a safe harbor for a mortgage servicer to continue to send advices and payment books to the debtor even if the debt has been discharged. The activity that is permitted must be the ordinary course of business between the debtor and the servicer.

75. "Debt relief agencies" include attorneys that provide bankruptcy assistance to persons with consumer debt and nonexempt assets worth less than $150,000. DRAs are required to do what they promise to do, are prohibited from making statements or counseling statements that are untrue (and that "upon the exercise of reasonable care, should have been known" by the agency), are prohibited from making misleading statements about the services offered by the agency and are prohibited from advising an assisted person to incur more debt if they are thinking of filing a bankruptcy. State consumer protection agencies are empowered to enforce these provisions and if a Debt Relief Agency violates these provisions, actual damages can be recovered on behalf of the assisted person. Attorneys' fees can be awarded in actions brought against Debt Relief Agencies. § 526

Debt Relief Agencies are not limited to debtors' counsel but could include attorneys that provide services to individuals who are also creditors in bankruptcy cases. ***NOTE:*** *For no obvious reason DRA does* ***not*** *include providing bankruptcy assistance to a debtor with more than $150,000 of nonexempt property.*

76. Debt relief agencies must disclose the costs of services, must provide to all clients a written notice of their rights and obligations (statements must be true, debtors must disclose all assets and liabilities, debtors must reveal their "Current Monthly Income", and the cases are subject to audit), must enter into a written contract with their clients, must provide a copy of the contract to the client, must

disclose that an attorney may not be necessary to file a bankruptcy, and must maintain copies of disclosures given to any person for two years. § 527

> *The written disclosure is clearly spelled out in the statute and the disclosures given to a debtor must be "substantially similar" to the notice prescribed by statute. The prescribed notice may be modified, it appears, "to the extent applicable." That may permit the removal of references to a Petition Preparer if an attorney gives the disclosure.*

77. A Debt Relief Agency must disclose in advertising: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." Advertising must not mislead a consumer to believe that credit counseling is offered rather than bankruptcy assistance. § 528

> *If the Debt Relief Agency is providing assistance to creditors, for example, a firm that assists landlords in pursuing their rights in bankruptcy, the mandated statement in advertising may, in fact, be misleading, or totally false.*

78. Funds deposited in an education individual retirement account or in a tuition credit or certificate more than a year prior to the filing of the bankruptcy would not be property of the estate. For funds deposited within two years before filing and the year before filing, the maximum amount that is excluded from property of the estate is $5,000. § 541(b)(5) and (b)(6)

> *The implication is that funds deposited in the account within the year prior to the bankruptcy filing would be property of the estate. The person for whom the benefit applies is the debtors child, stepchild grandchild or step grandchild.*

79. Pawned property is not property of the estate if timely redemption was not exercised. § 541(b)(8)

80. In determining what must be paid to unsecured creditors in a Chapter 13 case, funds withheld from wages as contributions to a pension or retirement plan shall not be deemed disposable income. § 541(b)(7)

81. A trustee cannot avoid a payment made to a creditor in accordance with an alternative repayment plan created by a credit-counseling agency as a preference. § 547(h)

82. A trustee cannot avoid a prepetition transfer as a preference if the transfer was a payment of a debt for a domestic support obligation. § 547(c)(7)

83. The period for a lien perfection to relate back under § 547 is expanded from 20 days to 30 days. § 547(c)(3)(B)

84. The look back for recovery of a fraudulent conveyance is lengthened from one year to two years. § 548(a)(1)

85. A Chapter 7 or Chapter 13 trustee must notify the holder of a support claim of its rights to use the services of a support enforcement agency, must disclose the address and phone number of the agency to the support creditor, must provide an explanation of the rights of the support creditor and must notify the support assistance agency in the state in which the holder resides of the name, address and telephone number of the holder of the claim. §§ 704(c)(1) and 1302(d)

> *It is difficult to see how a trustee will be made aware of the phone number of the support creditor. This anticipates an additional disclosure by the debtor.*

86. Only the U.S. Trustee, (or Bankruptcy Administrator) or the court has standing to request dismissal or conversion of a Chapter 7 case for abuse if the debtor's current monthly income is less than the median income. Presumption of abuse under the Means Test is unavailable if debtor—"including a veteran"—has current monthly income that is equal to or less than the median income. § 707(b)(1), (b)(6) and (b)(7)

87. Abuse is presumed—The Means Test—if the debtor's Current Monthly Income,

> less "scheduled" contract payments due to secured creditors over five years divided by 60,
> less arrearages or "any additional payments" which would be necessary in a Chapter 13 plan for the debtor to keep possession of a house, car or other necessary property, divided by 60,

less priority debts divided by 60,
less the expenses specified by the IRS in its financial analysis standards—National and Local and Other Necessary Expenses,
less other actual expenses as permitted by the IRS,
less health and disability insurance expenses and a health savings account,
less "family violence" expenses,
less up to 5% additional expense for food,
less up to 5% additional expense for clothing,
less the actual monthly costs of caring for an elderly, chronically ill or disabled household or family member, even if not a dependent,
less the actual expenses of administering a Chapter 13 case not to exceed 10% as determined by the U.S. Trustee,
less up to $1500 per year actual expenses for each dependent child under 18 in school, divided by 12
less additional costs for home energy expenses

is equal to or greater than $167 or is equal to or greater than $100 *and* greater than 25% of the debtor's non-priority, unsecured debts. § 707(b)(2)

> *Some of the expenses require documentation, such as the additional allowances for food or clothing, or the monthly costs of caring for an elderly, ill or disabled family member. Presumption can be rebutted by "special circumstances" including serious medical condition or active duty in Armed Forces, but each additional expense must be documented.*
>
> *Even though §707(b) does not specifically permit the subtraction of pension loan payments from the debtor's Current Monthly Income to ascertain whether the debtor has sufficient funds to pay debts, § 362(b)(19) provides that the automatic stay will not operate to halt such withholdings and § 1322(f) excludes loan repayment from disposable income. Also, § 541(b)(7)(A) & (B) excludes pension and retirement contributions from disposable income.*
>
> *The court may not consider whether the debtor has made or continues to make charitable contributions when abuse is asserted under § 707(b)(1).*

A tax lien for what would be a nonpriority tax obligation would be subtracted from CMI to apply the Means Test, if necessary for the debtor to keep a house.

"Current monthly income" is defined as the average monthly income of the debtor (or, in a joint case, the income of the debtor and the debtor's spouse) over the six full months prior to filing. It excludes social security benefits and unemployment compensation.

88. Disabled veterans are excepted from "means testing" if "indebtedness occurred" while on active duty. § 707(b)(2)(D)

This is the only use of "means testing" in the new law.

89. When presumption of abuse does not apply or is rebutted, the court is instructed to consider "whether the debtor filed the petition in bad faith," or (whether?) "the totality of the circumstances . . . of the debtor's financial situation demonstrates abuse." § 707(b)(3)

Curiously, the section gives rejection of a personal services contract as a specific circumstance to consider.

90. Debtor's attorney must reimburse trustee's prosecution costs, including attorney fees, if § 707(b) motion is granted and attorney violated rule 9011 in filing the case under Chapter 7. Civil penalties may also be imposed. § 707(b)(4)

91. Debtor's attorney's signature on petition is certification of reasonable investigation of the circumstances that gave rise to the petition and that the attorney has no knowledge after an inquiry that the information provided is incorrect. Penalties if the attorney is wrong. § 707(b)(4)(C)

92. If "party in interest" other than trustee or U.S. Trustee loses a § 707(b) motion, debtor may be awarded costs, including attorney fees, if the movant violated Rule 9011 or there was no reasonable investigation and the motion was coercive in purpose. § 707(b)(5)

Small businesses are protected from these sanctions.

93. The U.S. Trustee must review all materials filed by all Chapter 7 debtors, and not later than ten days after the meeting of creditors, file a statement whether the presumption of abuse is triggered. The court must serve this statement on all creditors within five days of filing. If the debtor has income in excess of the median income, the U.S. Trustee must either file a motion to dismiss or to convert the case or file a statement of reasons why the motion is not appropriate, within 30 days of the filing of the notice. § 707(b)

94. On motion of the victim of a "crime of violence" ("an offense that has as an element the use, attempted use or threatened use of physical force against the person or property of another") or the victim of a "drug trafficking crime" ("any felony punishable under the Controlled Substances Act or Maritime Drug Law"), the court may dismiss a voluntary Chapter 7 unless the debtor needs Chapter 7 to satisfy a domestic support obligation. § 707(c)

> *The test is the best interest of the **victim** rather than the traditional view that the bankruptcy should proceed if it is in the best interests of the **creditors**.*

95. A debtor may redeem property only by satisfying the lien in full at the time of redemption. § 722

> *The practice of redemption financing that has grown recently will probably be an effective way of "cramming down" an automobile in Chapter 7 cases, reducing the amount to be paid to the redemption value of the property.*

96. Debtor is denied discharge if the debtor fails to complete an educational course concerning personal financial management. § 727(a)(11)

97. A Chapter 7 debtor cannot receive a discharge if the debtor received a discharge in a case commenced within eight years of the filing of the petition. § 727(a)(8)

98. At the time a discharge is entered, the Chapter 7 trustee must notify the holder of a domestic support obligation and the applicable state child support agency of the last known address of the debtor, the address of the debtor's employer, the name of each creditor holding a debt not dischargeable under § 523(a)(2), (4) or (14A), and all debts reaffirmed. § 704(c); *see also* § 1302(d)

This information will necessitate an additional notice from trustees, which, along with the additional information required on a final report, will involve additional record keeping.

99. A Chapter 13 trustee must give notice to a domestic support creditor at the time of the discharge as to the debtor's last known address, the address of the debtor's employer, and the name of every creditor that holds a claim that is not discharged under § 523(a)(2) or (4) or that is reaffirmed. § 1302(d)(1)

It is uncertain why a Chapter 13 trustee must provide information relative to a Chapter 13 debtor that elects to reaffirm a debt.

100. A domestic support obligation holder "may request" of a creditor with nondischargeable debt listed above, or a debt that was reaffirmed, the last known address of the debtor. § 1302(d)(2)

A creditor that provides such information to a support creditor is immune from liability by virtue of providing that information.

101. If a Chapter 13 debtor fails to file a tax return under § 1308, the court shall dismiss or convert the case. § 1307(e)

102. It is a ground for dismissal of a Chapter 13 case that the debtor has failed to pay a domestic support obligation that first becomes payable after the filing of the petition. § 1307(c)(11)

103. New § 1308 contains many new tax return responsibilities for Chapter 13 debtors, including that all returns "required" for the four years ending on the petition date have been filed with the taxing authority by the day before the first scheduled meeting of creditors. The Chapter 13 trustee may "hold open" the meeting of creditors for limited periods to allow the debtor to file unfiled returns. § 1308 *See also* § 521(e), (f), (g) and (j).

104. If a Chapter 13 debtor is proposing to pay all disposable income for a period of five years, then the plan may provide for payment of less than 100% to the holder of a domestic support obligation assigned to a governmental unit under § 507(a)(1)(B). § 1322(a)(4)

105. A Chapter 13 plan may provide for the payment of interest accruing postpetition on any unsecured claim that is nondischargeable but only if the debtor has proposed a plan that pays all allowed claims in full. § 1322(b)(10)

> *This appears to open the door to some limited creative classification of nondischargeable debts, but since it is applicable only to 100% dividend cases, its application will be limited.*

106. If a Chapter 13 debtor's current monthly income combined with spouse's current monthly income is greater than the applicable median income, the plan proposed by the debtor must be for at least five years. § 1322(d)(1)

> *Below median income debtors may elect a plan no less than three years nor more than five.*

107. A Chapter 13 plan may not materially alter the terms of a pension loan described in § 362(b)(19) and the amount required to pay such a loan is not disposable income. § 1322(f)

> *Consensual withholding of wages for pension loan repayment would be a "reasonably necessary" expense for under median income debtors and an additional deduction from the "Means Test" determination for above median income debtors to ascertain the funds that will be paid to unsecured creditors. It further undermines the holding of* ***In re Harshbarger,*** *66 F.3d 775 (6th Cir. 1995).*

108. A hearing on confirmation of a Chapter 13 plan must take place no sooner than 20 days and not later than 45 days after a meeting of creditors. § 1324(b)

> *The court can hold a confirmation hearing earlier than 20 days if the court determined that it would be in the best interests of the creditors to hold an earlier hearing. Anticipate that many "early confirmation" jurisdictions will seek an earlier date unless any party objects. That notice could be provided in connection with the notice of the commencement of the case. There is no provision for a later confirmation hearing.*

109. A Chapter 13 plan must provide that a secured creditor retain its lien until the payment of the entire underlying debt, or entry of the discharge. § 1325(a)(5)(B)(i)

110. Periodic payments to be made to each secured creditor must be made in equal monthly amounts, and such monthly amount must be sufficient to provide adequate protection. § 1325(a)(5)(B)(ii)

> *The concept of "adequate protection" is now applicable to the payments proposed to secured creditors at confirmation. The use of pro rata distributions to secured claim holders in Chapter 13 would be ended, although the amount of monthly payments may vary from creditor to creditor. Equal payments may collide with the adequate protection requirement.*
>
> *It is possible that a creditor could agree to a "step payment" plan, but such would be unlikely unless the level payments might be increased at a later date in the plan.*

111. A Chapter 13 plan cannot be confirmed unless the debtor demonstrates that all postpetition support payments have been made. § 1325(a)(8)

> *As with other provisions of § 1325(a), the debtor will bear the burden of proof to establish that postpetition support payments have been made.*

112. A Chapter 13 plan cannot be confirmed unless the debtor has filed all tax returns required by new § 1308. § 1325(a)(9)

113. The provisions of § 506 shall not apply to a claim treated under § 1325(a)(5) if the creditor holds a purchase money security interest in a "personal use" motor vehicle that was incurred within 910 days of filing or a purchase money security interest in anything of value incurred within one year of the filing. § 1325(a)

> *The limitation on "valuing" the collateral under § 1325(a)(5)(B) does not preclude "acceptance" of a Chapter 13 plan that does "cram down" a purchase money security interest under § 1325(a)(5)(A). "Acceptance" might be interpreted to mean lack of objection after adequate notice. It is not clear whether a transfer of the collateral back to the creditor would preclude a deficiency claim in the case*

because the requirements of § 1325(a)(5)(B) can be satisfied by a transfer of property to the creditor equal to the amount of the claim, and the value of the vehicle would be the debt. The auto non-cram down would only apply to vehicles used for personal use. Commercial or business vehicles would still be subject to the cram down if purchased more than one year before petition.

114. For all debtors, the amount determined to be "disposable income" must be paid to *unsecured* creditors only. In other words, the "reasonably necessary" deductions for expenses include payments to secured creditors and lessors. § 1325(b)(1)(B)

115. For debtors with current monthly income greater than the applicable median income, the amount that must be paid in a plan to unsecured creditors is determined by applying the means test of § 707(b)(2)(A) and (B).

*The determination of a debtor's disposable income begins with the defined term "Current Monthly Income," reduced by any amount that the debtor received for child support, foster care, or disability payments for a dependent child. For debtors with income below the median income, the "reasonably necessary" test still applies to expense deductions from current monthly income. The amount that must be paid to unsecured creditors by over median income Chapter 13 debtors is the amount mathematically determined by the Means Test without regard to the reasonableness or necessity of the debtor's actual expenses. The statute still requires the commitment of "**projected** disposable income." For all debtors, disposable income starts with Current Monthly Income, an average of the debtor's income for six months **prior** to filing.*

116. For under median income debtors, domestic support obligations that become payable after the petition are deducted to arrive at disposable income. § 1325(b)(2)

117. A Chapter 13 plan cannot be confirmed unless the debtor can demonstrate that the filing of the petition was in good faith. § 1325(a)(7)

The test under prior law related only to the good faith of the plan, not the initial case filing. While some courts had previously read an implied good faith in filing requirement, the law now clearly

precludes confirmation of a plan unless the good faith of the filing can be demonstrated.

118. Within 60 days of the filing of a petition, a Chapter 13 debtor must provide to lessors of personal property or purchase money secured creditors reasonable evidence of insurance on the property that the debtor retains. The debtor must continue to provide proof of such insurance for as long as the debtor retains possession of the property. § 1326(a)(4)

119. A Chapter 13 debtor must commence payments under a plan within 30 days of the filing of the petition but may reduce the payments to the trustee by the amounts that the debtor pays directly to lessors of personal property or purchase money secured creditors. § 1326(a)(1)

If the court orders the trustee to make these payments, then the amount that would need to be paid to the trustee must be sufficient for the trustee to make these preconfirmation payments. If the debtor is to be the disbursing agent, the amount to the trustee will remain reduced.

120. A Chapter 13 debtor must pay directly to the lessor of personal property the lease payments that become due after the filing of the petition and must provide to the trustee proof that such payments were made. § 1326(a)(1)(B)

The court may order alternative treatment of the lease payments under this section, requiring or permitting the trustee to make the postpetition, preconfirmation payments to the lessor of personal property. Such would enhance the accuracy of the records of payments.

121. A Chapter 13 debtor must pay directly to a purchase money secured creditor payments that are sufficient to provide adequate protection of the portion of the obligation becoming due after the petition and must provide to the trustee proof that such payments were made. § 1326(a)(1)(C)

If the court orders otherwise, alternative amounts or methods of preconfirmation payments can be established. If debtors are to make payments to creditors between filing and confirmation, whereupon

trustees assume the payments, the reconciliation of the amounts paid to the claims filed will be difficult, if not impossible.

122. A Chapter 13 plan must provide payments to a Chapter 7 trustee awarded compensation "due to" dismissal or conversion of a case pursuant to § 707(b). The payments to the trustee are prorated over the plan in amounts not exceeding the greater of 5% of the payments to unsecured creditors divided by 60 or $25 per month. § 1326(b)(3)

This obligation is not excepted from discharge, but it can be collected in a subsequent Chapter 13 case.

123. No more than 10 days prior to the entry of a discharge under § 1328, the court must hold a hearing after notice to determine whether the debtor may be subject to securities fraud liability or other criminal or civil liability limiting the debtor's homestead under § 522(q). § 1328(h)

124. A Chapter 13 debtor may not receive a discharge unless the debtor certifies that all amounts due to a domestic support obligation are fully paid. § 1328(a)

There does not appear to be an obligation on the trustee or other officer to verify the accuracy of the certification made by the debtor.

125. No discharge is available for domestic support claims, taxes the debtor should have withheld, fraudulent, unfiled or late filed tax obligations, fraud claims, unlisted debts, defalcation debts, long term debts, student loan obligations, DUI obligations criminal restitution and criminal fines, restitution or damaged from a civil action due to willful or malicious injury to a person. § 1328(a)(2)

The superdischarge is greatly reduced, but would still apply to nonsupport domestic obligations and unpaid but timely filed taxes. There will now be two additional types of taxes in Chapter 13 (as well as the nonpriority, dischargeable taxes as under existing law), dischargeable priority taxes, income taxes less than three years old and taxes assessed within 240 days of filing, and nondischargeable nonpriority taxes (older unfiled taxes or taxes based on fraudulent returns). Priority taxes help you "pass" the Means Test while nonpriority but nondischargeable do not.

126. A debtor may not receive a discharge in Chapter 13 if the debtor received a discharge in a Chapter 7, 11or 12 case filed within four years of the filing of the Chapter 13. § 1328(f)(1)

> *Note that the Chapter 20 option may still be available if the debtor does not need a discharge in the subsequent Chapter 13 case.*

127. A Chapter 13 debtor may not receive a discharge if the debtor received a discharge in a previous Chapter 13 case filed within two years of the filing of the current case. § 1328(f)(2)

128. The court may not grant a Chapter 13 discharge unless the debtor has completed an educational course concerning personal financial management as approved by the U.S. Trustee. § 1328(g)

> *Many Chapter 13 trustees will be providing educational courses, funded through the trustee's percentage fee.*

129. A debtor may modify a confirmed plan to purchase health insurance or to reflect a change in the cost of health insurance. § 1329(a)(4)

> *The debtor may be required to file proof that the health insurance was actually obtained. Note that there is a new cross-reference to § 1325(b) added to § 1329(a)(4)—suggesting that the disposable income test applies at modification after confirmation.*

130. The format of final reports must be uniform, as prescribed by the Attorney General and the reports must contain the following information: [18 U.S.C. § 589b(d)]

The length of time the case was pending
The assets that were abandoned
The assets that were exempted
All receipts and disbursements in the case
The expenses of administration
The claims asserted
The claims allowed
Distribution to claimants
Claims discharged without payment

The date of confirmation of the plan
The date of each modification of the plan
The date of all defaults by the debtor

The meaning of some of these terms is unclear such as the difference between claims asserted and claims allowed. Clearly trustees must maintain a more detailed set of records to be able to generate a final report that includes all modifications and all defaults.